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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Concerning Procedures for Filing Initial FOIA Requests

AGENCY: National Labor Relations Board.

ACTION: Final Rule.

SUMMARY: The National Labor Relations Board (NLRB or Board) is amending regulations concerning the procedures for filing initial Freedom of Information Act (FOIA) requests. The revisions require that all FOIA requests for records located in Washington, DC, be made to the NLRB FOIA Officer in Washington, DC.

DATES: *Effective date:* [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, Room 1600, 1099 14th Street NW., Washington, DC 20570-00001, Telephone (202) 273-1067 (this is not a toll-free number),

1-866-315-6572 (TTY/TDD), e-mail address Lester.Heltzer@nrlb.gov.

SUPPLEMENTARY INFORMATION:

I. Current regulation

Section 102.117(c)(1) provides in part that “If the request is made for records in a Regional or Subregional Office of the Agency, it should be made to that Regional or Subregional Office; if for records in the Office of the General Counsel and located in Washington, DC, it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, DC; if for records in the offices of the Board or the

Inspector General in Washington, DC, to the Executive Secretary of the Board, Washington, DC.”

II. Revision

FOIA requesters seeking records that are located in Washington, DC may not know whether the requested records are in the Office of the General Counsel, the Offices of the Board, or the Office of the Inspector General, and, accordingly, may misdirect the request. Currently, when a request is misdirected, the receiving office forwards it to the appropriate office and notifies the requester that it has done so. This requires a response by both the receiving and the appropriate offices, and delays the final response to the FOIA requester. By requiring that all requests for records located in Washington, DC be made to the NLRB FOIA Officer, a newly-created position, requesters need not know in which office the records they seek are located, and their requests will be processed more efficiently and expeditiously.

III. Administrative Procedure Act

Because the change involves rules of agency organization, procedure, or practice, the Agency is not required to publish it for comment under Section 553 of the Administrative Procedure Act (5 U.S.C. 553).

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not

have a significant economic impact on small business entities since the changes make it easier for all FOIA requesters to file their requests.

V. Small Business Regulatory Enforcement Fairness Act

Because the rules relate to Agency procedure and practice and merely modify the Agency's existing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

VI. Paperwork Reduction Act

This revision does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

- For the reasons set forth above, the NLRB amends 29 CFR part 102 as follows:

PART 102—RULES AND REGULATIONS

- 1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended ((29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

- 2. Amend § 102.117 by revising paragraphs (c)(1) and (c)(2)(iii) and (v) to read as follows:

§ 102.117 Freedom of Information Act Regulations: Board materials and formal documents available for public inspection and copying; requests for described

records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.

* * * * *

(c)(1) Requests for the inspection and copying of records other than those specified in paragraphs (a) and (b) of this section must be in writing and must reasonably describe the record in a manner to permit its identification and location. The envelope and the letter, or the cover sheet of any fax transmittal, should be clearly marked to indicate that it contains a request for records under the Freedom of Information Act (FOIA). The request must contain a specific statement assuming financial liability in accordance with paragraph (d)(2) of this section for the direct costs of responding to the request. If the request is made for records in a Regional or Subregional Office of the Agency, it should be made to that Regional or Subregional Office. If the request is for records located in Washington, DC (in the Office of the General Counsel, the Offices of the Board, or the Office of the Inspector General), it should be made to the NLRB FOIA Officer, Washington, DC. Requests made to other than the appropriate office will be forwarded to that office by the receiving office, but in that event the applicable time limit for response set forth in (c)(2)(i) of this section shall be calculated from the date of receipt by the appropriate office. FOIA requests made to an office other than to the office where the records were generated may be referred to the generating office for response. In the case of records generated by the Inspector General in the possession of another office, or in the possession of the Inspector General but generated by another office of the Agency, the request will be referred to the appropriate FOIA officer for the generating office for decision. If the Agency determines that a request does not

reasonably describe records, it may contact the requester to inform the requester either what additional information is needed or why the request is insufficient. Requesters may be given an opportunity to discuss their request so that requests may be modified to meet the requirements of this section.

(2) * * *

(iii) Within 20 working days after receipt of a request by the appropriate office of the Agency, a determination shall be made whether to comply with such request, and the person making the request shall be notified in writing of that determination. In the case of requests made for Inspector General records, that determination shall be made by the Inspector General. In the case of all other requests, that determination shall be made by the NLRB FOIA Officer, or the Regional or Subregional Office, as the case may be. If the determination is to comply with the request, the records shall be made promptly available to the person making the request and, at the same time, a statement of any charges due in accordance with the provisions of paragraph (d)(2) of this section will be provided. If the determination is to deny the request in any respect, the requester shall be notified in writing of that determination. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver or reduction or placement in a particular fee category; and a denial of a request for expedited treatment. For a determination to deny a request in any respect, the notification shall set forth the reasons therefor and the name and title or position of each person responsible for the

denial, shall provide an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation (this estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption), and shall notify the person making the request of the right to appeal the adverse determination under provisions of paragraph (c)(2)(v) of this section.

* * * * *

(v) An appeal from an adverse determination made pursuant to paragraph (c)(2)(iii) of this section must be filed within 28 calendar days of the service of the adverse determination, in whole or in part. If the adverse determination was made by the NLRB FOIA Officer concerning records located in the Office of the General Counsel, Washington, DC, or by a Regional Office or a Subregional Office concerning records located there, the appeal shall be filed with the General Counsel in Washington, DC. If the adverse determination was made by the NLRB FOIA Officer concerning records in the Offices of the Board, or by the Inspector General concerning records generated by that office, the appeal shall be filed with the Chairman of the Board in Washington, DC. As provided in paragraph (c)(2)(iii) of this section, an adverse determination will notify the requester of the right to appeal the adverse determination and will specify where such appeal shall be filed. Within 20 working days after receipt of an appeal, the General Counsel or the Chairman of the Board, as the case may be, shall make a determination with respect to such appeal and shall notify the person making the request in writing. If the determination is to comply with the request, the record shall be made promptly available to the person making the request upon receipt of payment of any charges due in

accordance with the provisions of paragraph (d)(2) of this section. If on appeal the denial of the request for records is upheld in whole or in part, the person making the request shall be notified of the reasons for the determination, the name and title or position of each person responsible for the denial, and the provisions for judicial review of that determination under the provisions of 5 U.S.C. 552(4)(B). Even if no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the General Counsel or the Chairman of the Board may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of an adverse determination under this appeal procedure by written notification to the person making the request. In such event, the time limit for making the determination shall commence with the issuance of such notification. An adverse determination by the General Counsel or the Chairman of the Board, as the case may be, will be the final action of the Agency. If the requester wishes to seek review by a court of any adverse determination, the requester must first appeal it under this section.

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Signed in Washington, DC, January 25, 2012

Mark Gaston Pearce
Chairman

[FR Doc. 2012-2059 Filed 01/30/2012 at 8:45 am; Publication Date: 01/31/2012]